(Reserved judgment)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 3261 (S/S) / 2001.

Chandra Prakash Joshi, Officer Superintendent
Lake Development Authority, Nainital
Dist: Nainital …. Petitioners.

Versus

State of Uttaranchal through its Secretary,
Nagar Vikas Abhiyantran, Sakha,
Dehradun & others.

… Respondents.

HON'BLE P.C. PANT-J:

This writ petition has been moved under Article 226 of Constitution of India for mandamus directing the respondents to give salary of the post of Office Superintendent to the petitioner with effect from 1991. Simultaneously the order dated 20.09.2003 passed by the Government of Uttaranchal has been sought to be quashed whereby the petitioner's representation has been rejected.

Brief facts of the case are that petitioner was initially appointed as a clerk with the lake Development Authority, Nainital in the year 1987 and later promoted as senior clerk in the same office vide order dated 01.07.1992. The post of office superintendent in the office was lying vacant. The Secretary, Lake Development Authority, Nainital vide

his letter dated 17.11.1992 made a recommendation to the Government for promotion of the petitioner to the post of office superintendent. Similar request was made by the Commissioner Kumaon Division (Ex officio Chairman, Lake Development Authority, Nainital) vide his letter dated 27.06.1994. Petitioner himself made representation in this regard. Meanwhile the petitioner was working as office superintendent under the orders of his superiors as there is none to look after the said work. On 13.01.1997 petitioner made a representation that at least he should be paid salary of the office superintendent as work of said is being taken from him. However, no positive response was received from anyone in the matter. After creation of State of Uttaranchal, Secretary Lake Development Authority and other Officers again recommended now to Government of Uttaranchal for giving promotion to petitioner on the post of office superintendent but nothing was done. Hence the writ petition. During the pendency of writ petition, in compliance of the interim orders passed by this court, the representation of the petitioner was considered and rejected by the Government of Uttaranchal, a copy of which is annexed as Annexure 20 to the writ petition and by making amendment in the petition the same has also been challenged and sought to be quashed.

The respondent No. 1 has filed the counter affidavit and contested the petition. In the counter affidavit it has been admitted that the petitioner was

appointed initially as a clerk in the year 1987 with Lake Development Authority, Nainital. His promotion to the post of senior clerk vide order dated 01.07.1992 is also admitted. As to the post of office superintendent it has been stated in the counter affidavit that said post comes under Development Authority Services. And cases of all the head clerks of various Development Authorities are considered before one is appointed to the post of Office Superintendent. This kind of appointment is covered under U.P. Development Authorities Services Rules, 1985 and the post comes under the purview of Public Service Commission though through promotion. The unfortunate part of the story is this that there is no post of head clerk in Lake Development Authority and the petitioner so far, as such, has not been appointed as head clerk with the Authority. The respondents have not disputed that the work of office superintendent is being taken from the petitioner since the post fell vacant. However, as to his legal right on said post of the petitioner the same is denied.

I heard learned counsel for the parties and perused the record.

Admittedly the petitioner was appointed as Clerk in the year 1987 in Lake Development Authority. It is also admitted between the parties that he was promoted as senior clerk in the office of said Authority with effect from 01.07.1992. It is also not disputed that the post of office superintendent in the lake

Development Authority is lying vacant and the petitioner is officiating on the post of office superintendent. The only question before this court is whether the petitioner can be appointed on the post of office superintendent or not, if not, is he still entitled to the salary of said post.

In view of the Service Rules applicable to the post of office superintendent in a Development Authority, the same being the centralized post and required to be filled from amongst head clerks, the petitioner does not fulfill the requisite criteria. Since there is no post of head clerk in the Lake Development Authority and the petitioner has admittedly never held the post of head clerk he can not be said to be legally qualified for appointment to the post of office superintendent. As such, the rejection of representation of the petitioner by the Government of Uttaranchal vide order dated 20.09.2003 to the extent of refusing to promote the petitioner on said post can not be said to be illegal nor to that extent impugned order (Annexure 20) needs to be interfered. However, as to the payment of salary, since admittedly the petitioner is working on said post since 1992 uninterruptedly, in view of the principle of law laid down in *Jaswant Singh Vs Punjab Poultry Field Staff Association (2002) 1 Supreme Court Cases 261,* he is entitled to the salary payable to office superintendent till the regular appointment is made in

the said post or till some other person takes over work from the petitioner.

In view of the above discussion accordingly this court partly allows the writ petition to the extent that the petitioner shall be paid salary of the office superintendent for the period he has done work on officiating capacity on the said post till someone-else takes over from him the charge of office superintendent. However, the relief of mandamus directing the respondents to promote the petitioner to the post of office superintendent is refused. Writ petition is accordingly disposed of. No order as to costs.

Dated: August 5, 2004. **(P.C.Pant- J)**

S.S. Negi.